

What is the nature and extent of claimant's injury and/or disability? More particularly, is claimant's injury limited to a scheduled injury to the right knee or did claimant suffer accidental injury to his low back either on the date of accident or as a direct and natural consequence of his knee injury? Further, respondent contends claimant did not

make a good faith effort in attempting to obtain employment after being released by the doctors from treatment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record filed herein, the Appeals Board finds as follows:

Claimant's job involved driving a truck and loading and unloading furniture for respondent. He primarily moved heavy furniture such as pianos, although he did have assistance moving the large items. On June 10, 1997, claimant was standing on a ladder which was leaning against the back of a truck. While he was working on the clearance slat on the back of the truck, another individual started the truck and drove it away. Claimant fell with the ladder approximately seven feet to the pavement. He struck his right knee on the pavement and bruised his ribs on the ladder. He was taken to the St. Francis emergency room, where they took x-rays of the knee. Claimant did not require stitches but did have an abrasion on the knee. Approximately four days later, he was being examined by his family physician, Linus Ohaebosim, D.O. Dr. Ohaebosim ordered an MRI of the knee, which indicated a torn medial meniscus. Claimant was referred by Dr. Ohaebosim to Kenneth Jansson, M.D., a board certified orthopedic surgeon, for treatment of the knee. Dr. Jansson performed an arthroscopy on the knee on July 24, 1997, to repair the torn medial meniscus. He limited claimant to no lifting over 60 pounds, with occasional kneeling, squatting and climbing of stairs. He continued treating claimant through December 1997, at which time he released claimant with a 10 percent permanent impairment to the right lower extremity for the injury to the knee.

Claimant alleges that he told both Dr. Ohaebosim and Dr. Jansson that his low back was injured at the time of the fall. However, neither doctor's records indicate any problems with claimant's low back until October 1998. At that time, Dr. Ohaebosim's notes indicate that claimant referenced low back pain, which claimant alleges was due to falling from the ladder.

Claimant had earlier testified that somehow, during the fall, he not only struck his knee and ribs, but also his low back. The mechanics of this fall were never explained.

Dr. Jansson's notes fail to show that claimant ever complained about his low back. In addition, the November 1997 functional capacity evaluation, performed at Dr. Jansson's request, failed to indicate any limitations of bending or stooping, which Dr. Jansson stated would be unusual with a patient having significant back complaints.

Dr. Ohaebosim treated claimant in December 1998 for back pain due to a urinary tract infection. However, when Dr. Ohaebosim saw claimant on April 2, 1999, he continued to have low back complaints.

Claimant was also examined by Pedro A. Murati, M.D., as a referral from claimant's attorney, with the first examination on January 26, 1998. This was the first mention of back complaints in the medical records. At that time, claimant had minor back complaints, which Dr. Murati diagnosed as a lumbosacral strain. Dr. Murati further diagnosed right partial medial meniscectomy, post surgery, and a possible reflex sympathetic dystrophy of the right lower extremity.

Dr. Murati next saw claimant on December 10, 1998, at which time claimant continued with right knee and low back pain with radiation of his back pain into the right leg. Reflex sympathetic dystrophy was not mentioned at the time of Dr. Murati's second examination. Dr. Murati diagnosed lumbosacral strain with loss of range of motion secondary to an antalgic gait, atrophy of the right quadriceps and right SI joint inflammation. He placed claimant on work restrictions of eight hours per day, allowing frequent standing, walking and driving, with occasional sitting and bending. He restricted claimant from climbing stairs, climbing ladders, squatting, crawling and kneeling. He recommended claimant alternate sitting, standing and walking, with weight limits of 35 pounds pushing and pulling, lifting and carrying occasionally, 20 pounds frequently and 10 pounds constantly. He assessed claimant a 2 percent impairment for the right partial meniscectomy, an 8 percent lower extremity impairment for the right quadriceps muscle atrophy, a 5 percent impairment for the lumbosacral strain, secondary to the antalgic gait, and a 7 percent whole person impairment for the loss of range of motion of the lumbar spine. When combined, this computed to a 16 percent whole person impairment, based upon the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition.

Dr. Murati opined that there was a causal relationship between the fall in June 1997 and the knee injury and the back injury. While Dr. Murati was not sure if the back injury occurred at the time of the fall, he did feel that there was an indirect relationship between claimant's antalgic gait or limp and claimant's ongoing back complaints. When he first examined claimant in January 1998, claimant was walking with a cane. There is no evidence that any doctor prescribed this cane. Dr. Jansson, claimant's treating physician for the knee, did not prescribe the use of a cane, but does acknowledge that claimant was using it at times while being treated by Dr. Jansson.

Dr. Jansson did not find a correlation between claimant's knee injury and his back symptoms. The only mention of claimant's back in Dr. Jansson's reports is during the September 21, 1998, examination. At that time, claimant complained of numbness in his leg, around the knee, which Dr. Jansson speculated could be related to a back injury. However, he did not himself see the relationship. Dr. Jansson released claimant in September 1998 with a 10 percent permanent impairment to the right lower extremity.

Claimant was referred by the Administrative Law Judge to Philip R. Mills, M.D., a physiatrist in Wichita, Kansas, on March 2, 1999. Dr. Mills diagnosed claimant with a torn medial meniscus in the right knee related to the June 10, 1997, injury. He also diagnosed low back pain, which he was unable to causally relate, within a reasonable degree of medical probability, to the knee injury. Dr. Mills opined that the back problems were more likely related to claimant's body habitus. Claimant has been described in the record as standing 6'1" and weighing anywhere from 234 to 310 pounds. Unlike Dr. Murati, Dr. Mills found no reflex sympathetic dystrophy and further, at the time of his examination, claimant had no atrophy of the right lower extremity. Dr. Mills rated claimant at 7 percent to the right lower extremity.

Claimant testified during the regular hearing that his back injury occurred at the time of the fall. Claimant described a bruise on his low back which he testified was present from the day of the fall. Dr. Murati examined the bruise, but described it as being a varicosity, which he stated meant varicose veins. No other doctor who examined claimant identified any type of bruise on claimant's low back.

After his injury, claimant attempted to return to work for respondent, but respondent was unable to meet the restrictions placed upon him by the treating doctors. Claimant's job with respondent required not only that he drive a truck, but also that he be able to lift heavy objects, since his job consisted primarily of moving heavy furniture. Claimant's testimony identifies three other attempts to obtain employment after his release to return to work in December 1997 by Dr. Jansson. Claimant attempted to obtain work at Dondlinger's, O'Reilly Auto Parts and a temporary job service on Broadway in Wichita. No jobs resulted from those attempts. Claimant testified he felt he could perform the work with O'Reilly Auto Parts, which would have involved delivering auto parts around Wichita, as he was experienced in driving trucks around the Wichita area. In addition, the delivery of auto parts would not exceed the limitations placed upon him by the various doctors. Claimant filled out an application, but nothing developed from that application, and claimant did not contact any other auto parts stores in the Wichita area. Other than the three above-identified job attempts and claimant's attempts to return to work with respondent, claimant has made no effort to find a job since December 1997.

Claimant was evaluated by Jerry D. Hardin and Karen Crist Terrill regarding his past job history and the tasks associated with those jobs. Dr. Murati is the only doctor of record who provided an opinion about claimant's loss of task performing abilities under K.S.A. 1996 Supp. 44-510e. Dr. Murati was provided both Mr. Hardin's and Ms. Terrill's opinions and agreed with both Mr. Hardin's opinion that claimant has lost 75 percent of his ability to perform prior work tasks and Ms. Terrill's opinion that claimant has lost 20 percent of his ability to perform prior work tasks. Both Mr. Hardin and Ms. Terrill opined that claimant was physically capable of earning in the range of \$7 per hour in the Wichita area. When compared to claimant's stipulated average weekly wage of \$325, this would result in a

14 percent loss of wage earning ability. However, at the time of the regular hearing, claimant was unemployed and argues entitlement to a 100 percent loss of wages.

In proceedings under the Workers Compensation Act, it is claimant's burden to prove his or her entitlement to the benefits requested by a preponderance of the credible evidence. See K.S.A. 1996 Supp. 44-501 and K.S.A. 1996 Supp. 44-508(g).

Claimant has proven that he suffered accidental injury to his right knee, but has failed to prove that he injured his low back as the result of the fall on June 10, 1997.

The Appeals Board finds persuasive the findings of Dr. Jansson, Dr. Mills and Dr. Ohaebosim, which do not support claimant's allegations of a work-related low back injury.

Therefore, the Board finds claimant's award should be limited pursuant to K.S.A. 1996 Supp. 44-510e to his functional impairment. The Appeals Board finds the opinion of Dr. Jansson, claimant's treating physician, that claimant has a 10 percent impairment to the right lower extremity, to be the most credible and awards same.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Jon L. Frobish dated November 24, 1999, should be, and is hereby, modified, and an award is granted in favor of the claimant, Robert L. Holtsclaw, and against the respondent, Haggard & Son, Inc., and its insurance carrier, Commercial Union Insurance Company, for an injury occurring on June 10, 1997. Based upon an average weekly wage of \$325, claimant is awarded a 10 percent permanent partial disability to the right lower extremity.

Claimant is entitled to 29.14 weeks temporary total disability compensation at the rate of \$216.68 per week totaling \$6,314.06, followed by 17.9 weeks permanent partial disability at the rate of \$216.68 per week totaling \$3,703.06, making a total award of \$10,017.12.

As of the time of this award, the entire amount is due and owing and ordered paid in one lump sum minus any amounts previously paid.

In all other regards, the Award of the Administrative Law Judge is affirmed insofar as it does not contradict the orders contained herein.

IT IS SO ORDERED.

Dated this ____ day of May 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Douglas D. Johnson, Wichita, KS
Kendall R. Cunningham, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director